

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1443 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAYURBHAI M TRIVEDI

Versus

AHMEDABAD DISTIRCT PANCHAYAT

Appearance:

MR GIRISH PATEL for Petitioners
MR JF SHAH for Respondent No. 1
MR MB GANDHI for Respondent No. 2
Mr. B.Y.Mankad instructed by M/s. M.G.Doshit and
Company, advocates for Respondent No. 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 08/02/99

ORAL JUDGEMENT

This petition has been filed for a direction to the respondent Panchayat to fix the pay scale and allowances and other conditions of service including house rent allowance, compensatory allowance,

leave benefits, medical benefits, retiral benefits etc. of the petitioners from the dates of their respective appointments and for a direction to revise the pay scales and other conditions of service as per the recommendations of 2nd and 3rd Pay Commissions.

2. Late Shri Bhaishanker Nanabhai Solicitor got constructed one Dharmashala namely Revabai Bhaishanker Hindu Dharmashala in the year 1914. That Dharmashala by a Deed of Settlement dated 8th January, 1915 was given in a Trust to the Local Board of Taluka of Dascroi as a sole trustee to use the same for providing accommodation to the Hindu travellers on the terms and conditions mentioned in the Deed of Settlement dated 8th January, 1915. The aforesaid Dharmashala alongwith its assets vested in the local board of Taluka and that local board used to run, manage and control the said Dharmashala. Lateron the management of the Dharmashala came in the hands of the District Local Board of Ahmedabad constituted under the Bombay Local Boards Act, 1920. After coming into force of the Gujarat Panchayats Act, 1960, the local board stood dissolved and the management of the Dharmashala came to be vested in the Ahmedabad District Panchayat. Since then the respondent Panchayat is running and managing the said Dharmashala. After coming into force of the Bombay Public Trusts Act, 1950, the Trust was registerd as a public trust on 28th February, 1953. Besides the aforesaid Dharmashala, the respondent Panchayat is also running and managing the Muslim Musafirkhana at Kalupur, Ahmedabad. The petitioner nos. 1 to 13 are class III and IV employees and they are working for the period from one to fifteen years while the petitioner nos. 14 to 17 are class III and IV employees for the work of Musafirkhana and working for a period ranging from two to nine years. All the petitioners were appointed on ad hoc and temporary basis. The clerks are being paid consolidated salary of Rs.500/- per month, while other class III employees are being paid consolidated salary of Rs.430/- per month. The services of the petitioners are inter-changeable in Dharmashala and Musafirkhana. The management and control of Dharmashala and Musafirkhana including the power of appointment and termination of the personnel is vested in the Panchayat and they are servants of the respondent Panchayat andhence the petitioners are entitled to be put on an even level with other Panchayat servants.

3. The department of Panchayat and Health, Government of Gujarat by its resolution dated 5.7.73 has approved the revised pay scales of employees of

Dharmashala and Musafirkhana, but the respondent Panchayat is denying them the service conditions, benefits and allowances and others retiral benefits as compared to other employees. The petitioners and other employees are being treated discriminately which is violative of Articles 14 and 16 of the Constitution of India and the respondent is bound to follow the directive principles of the State policy.

4. According to the petitioners, certain persons and employees of Dharmashala and Musafirkhana are being given all rights, privileges, benefits of other employees of the Panchayat who are similarly situated and performing the same duties.

5. The respondent Panchayat has filed an affidavit-in-reply to the petitioner. It is submitted that Revabai Hindu Dharmashala is a trust registered under Bombay Public Trusts Act and it was created by late Shri Bhaishanker Nanalal from his own funds. The Dharmashala has been erected entirely from the funds of the said Shri Bhaishanker Nanalal Solicitor and the District Panchayat is only managing the said trust property in the capacity of a trustee. This Dharmashala is being managed entirely out of the income of the rent of shops and fees received from the passengers using the Dharmashala. The District Panchayat or the State of Gujarat had not contributed anything by way of financial assistance to the Dharmashala. The Dharmashala is run for the facility of Hindu travellers coming to Ahmedabad and the powers of the Dharmashala are being exercised consistent with the provisions of the Trust Deed. The Dharmashala is not an agent or instrumentality of the State or neither State nor other authority within the meaning of Article 12 of the Constitution. Hence, the petition is not maintainable at all. The employees of the Dharmashala are not employees of Ahmedabad District Panchayat. In the same manner, the employees Musafirkhana are also not the employees of the District Panchayat. They are being appointed by the Superintendent of the Dharmashala. Thus, the petitioners are not the panchayat employees. As such, rules and circulars are not applicable to the petitioners and their service conditions are also not being governed by the Gujarat Panchayat Service (Classification and Recruitment) Rules and Gujarat Panchayat Servants (Appointing Authorities) Rules. Since the trustees have to manage the trust property out of its own income, they have the necessary power and authority to create new posts with consolidated pay and thus to reduce the expenditure so as to conform to the income. The

petitioners being employees of Dharmashala and Musafirkhana trust, they cannot be equated with Panchayat employees and they cannot complain of discriminatory treatment compared to Panchayat employees in respect of pay and pay scales and other service conditions. The Panchayat does not receive any grant from the State Government for running Musafirkhana or Dharmashala.

6. The list has been revised. None appears to press this petition on behalf of the petitioners. I have heard the learned AGP Mr. B.Y. Mankad on behalf of the respondent State.

7. Considering the facts and circumstances stated above, the petitioners are not the servants of the Panchayat. They are employees of the Dharmashala and Musafirkhana which have been created by the Trustee deed. They are registered as Trusts under Bombay Public Trusts Act and their functionings are being governed by the terms and conditions of the Trustee. The State Government has not given any funds or grant for running the Hindu Dharmashala or Musafirkhana. As such, both the Dharmashala and the Musafirkhana do not come within the meaning of the Panchayat and the Panchayat is only managing the same. The petitioners are getting their salaries out of the income of the Dharmashala and Musafirkhana. They are not regular employees of the Panchayat. As such, they are not entitled for any benefit or any pay scales similar to other servants of the panchayat.

8. In view of the above discussion, the petition is devoid of any merits. It is liable to be dismissed. Accordingly, the petition is dismissed. Rule is discharged with no order as to costs.

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